



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Scott J. Nally, Director

FEBRUARY 20 2013

Mr. Richard Weemhoff  
Richland Shale Road Rail Depot, Inc.  
6352 Durbin Road  
Bellville, OH 44813

CERTIFIED MAIL

91 7108 2133 3932 1839 2801

RE: Proposed Director's Final Findings and Orders  
Richland Shale Road Rail Depot, Inc. Facility  
Mansfield, Ohio

Dear Mr. Weemhoff:

As you were aware when Richland Shale Road Rail Depot, Inc. (Richland Shale) purchased the property at 800/1000 Richland Shale Road, it was subject to Director's Final Findings and Orders requiring waste characterization and closure of hazardous waste units. While the former owner remains liable for performance of the environmental work required by the Orders, as the current owner, Richland Shale has also assumed the responsibility of complying with Ohio hazardous waste law. To that end, the enclosed Director's Final Findings and Orders would require Richland Shale to perform the work that has not been completed at this facility.

Although Richland Shale did not create the conditions which originally lead to the violations of hazardous waste laws, these conditions are continuing under Richland Shale's ownership. We wish to give Richland Shale the opportunity to correct these violations, however, without the imposition, at this time of any monetary penalty.

The enclosed Orders, as proposed, do not include or require the payment of a civil penalty settlement. We have included, however, an information sheet to assist you in understanding the hazardous waste administrative enforcement process within Ohio EPA's Division of Materials and Waste Management. The information sheet includes answers to questions commonly posed by persons involved in the administrative enforcement process. I encourage you to review the proposed Orders carefully. Please contact Frances M. Kovac of Ohio EPA's Legal Office at (614) 644-2844 within fourteen (14) days of your receipt of this letter. Ms. Kovac can assist with any questions you may have.

The administrative enforcement process typically includes a settlement conference call and/or face-to-face meeting to discuss the enforcement issues. Again, I encourage you to pursue the possibilities of settlement through a meeting or telephone conference by contacting Ms. Kovac. A resolution through administrative Orders would avoid the time and expense associated with litigation upon referral of this matter to the Ohio

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Attorney General. It is my expectation that this matter will be resolved expeditiously. If this matter is not resolved expeditiously, I will deem this offer withdrawn and I will consider other enforcement alternatives including referral of this matter to the Ohio Attorney General.

Because this letter and the attached documents summarize a proposed settlement, I consider them inadmissible by Richland Shale for any purpose in any enforcement action that the state may take against Richland Shale should this offer be declined.

I hope that we are able to resolve this matter via the enclosed proposed Director's Final Findings and Orders, and I thank you in advance for your cooperation.

Sincerely,



Scott J. Nally  
Director

cc: Pamela S. Allen, Chief, DMWM  
Shannon Nabors, Chief, NWDO  
John Pasquarette, NWDO  
Fran Kovac, Legal

Attachments

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

Richland Shale Road Rail Depot, Inc.  
1000 Richland Shale Road  
Mansfield, Ohio 44903

**Respondent**

**Director's Final  
Findings and Orders**

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are issued to Richland Shale Road Rail Depot, Inc. (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.13, 3734.02(G), and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the Facility shall in any way alter Respondent's obligations under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

Director's Final Findings and Orders  
Richland Shale Road Rail Depot, Inc.  
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1. Pursuant to ORC § 3734.02(G) and rule 3745-50-31 of the Ohio Administrative Code (OAC), the Director may, by order, exempt any person generating, storing, treating, or disposing of hazardous waste in such quantities or under such circumstances that, in the determination of the Director, it is unlikely that the public health or safety or the environment will be adversely affected thereby, from any requirement to obtain a permit or comply with other requirements of ORC Chapter 3734. Any such exemption shall be consistent with and equivalent to rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended.
2. Respondent is a "person" as defined in ORC § 3734.01(G) and OAC rule 3745-50-10(A).
3. Richland Moulded Brick Company, Inc. (RMB) owned a brick manufacturing facility located at 800 Richland Shale Road known as Plant #1, and the neighboring brick manufacturing facility located at 1000 Richland Shale Road known as Plant #2, Mansfield, Richland County, Ohio 44903 (Facility). These plants include all of the surrounding land areas described as SE S26 T22 R18 (7.32 acres), SW S26 T22 R18 (103.34 acres) and SE S27 T22 R18 (24.24 acres) at the Richland County Recorder's Office. Exhibit A generally outlines the Facility.
4. On October 5, 2006, Ohio EPA conducted an inspection at Plant #1 of the Facility. During this inspection, Ohio EPA discovered a storage area with hundreds of various sized containers of waste. This waste had been stored for years at the Facility. As a result of this discovery, Ohio EPA determined that RMB failed to evaluate wastes to determine if they were hazardous in violation of OAC rule 3745-52-11. RMB was informed of the violation in correspondence dated November 15, 2006.
5. As a result of RMB's failure to timely evaluate waste at the Facility, Ohio EPA conducted a focused/limited sampling event on April 8, 2008, to characterize some of the wastes referenced in Finding No. 4. of these Orders. Based upon results of the sampling event, Ohio EPA determined that wastes being stored at the Facility were characteristically hazardous waste, D001, D006, D008, D010, and D018, as described in OAC rules 3745-51-21 and 3745-51-24.
6. Based upon information in Findings Nos. 4. and 5. Ohio EPA determined that RMB had, *inter alia*, established and operated a hazardous waste storage facility without an installation and operation permit, in violation of ORC § 3734.02 (E) and (F). RMB was informed of the violation in correspondence dated October

23, 2008, including the results of the sampling event.

7. Based on the locations at the Facility where hazardous wastes were unlawfully stored, Ohio EPA identified the following areas subject to closure as hazardous waste units. These areas include, but are not limited to: the south end of the Strapping Building, generally identified as area A on the aerial photographs marked as Exhibit B, and attached to these Orders; Sections 1, 2, and 3 of the South Overhang, generally identified as Area B on Exhibit B; the barium carbonate storage area room, generally identified as Area C on Exhibit B; the Main Maintenance Room and Small Brick Building, generally identified as Area D on Exhibit B; the East Wall near the Stripper Machine, generally identified as Area E on Exhibit B; the Superintendent's Office and Maintenance Store Room, generally identified as Area F on Exhibit B; the South Wall of the Tunnel Kiln Building, generally identified as Area G on Exhibit B; the North Building, generally identified as Area H on Exhibit B; and the Front Office Building, generally identified as Area I on Exhibit B. Other areas of the Facility may also require closure as hazardous waste treatment, storage or disposal units, pending performance of Order No. 3.
8. As a result of the violations referenced in Findings Nos. 4. and 6. of these Orders, RMB consensually entered into Director's Final Findings and Orders (RMB Orders) on September 12, 2011. These RMB Orders required RMB to evaluate all remaining wastes at the Facility, closure of any unpermitted storage, treatment and disposal areas, and payment of a \$5,000.00 civil penalty.
9. On December 19, 2011, January 10, 2012, and February 6, 2012, RMB submitted waste evaluation information and a closure plan for three areas subject to closure. Ohio EPA evaluated this information and found it deficient with the requirements of the RMB Orders referenced in Finding No. 8. of these Orders. Additionally, Ohio EPA determined RMB to be in violation of the RMB Orders. Ohio EPA notified RMB of the violations and deficiencies in correspondences dated February 21, 2012, and April 6, 2012.
10. On July 30, 2012, Respondent purchased portions of the Facility that contain the previously identified hazardous waste units described in Finding No. 7. of these Orders, from RMB.
11. Due to the establishment and operation of hazardous waste storage facility as described in Finding No. 6. of these Orders, Respondent is at a minimum an owner of a hazardous waste storage facility. Respondent, as an owner of a hazardous waste storage facility, is subject to all general facility standards found

in OAC Chapters 3745-54 and 55, including but not limited to, closure in accordance with OAC rules 3745-55-11 through 3745-55-20, the financial assurance for closure requirements contained in OAC rules 3745-55-42 through 3745-55-51 and corrective action for waste management units in accordance with OAC rule 3745-54-101.

12. As a result of Respondent's ownership of a hazardous waste storage facility, as described in Findings Nos. 10. and 11. of these Orders, Respondent is in violation of ORC § 3734.02(E) and (F), is required to have a hazardous waste facility installation and operation permit and is subject to the general facility standards found in OAC Chapters 3745-54 and 55, including but not limited to, closure in accordance with OAC rules 3745-55-11 through 3745-55-20, the financial assurance for closure requirements contained in OAC rules 3745-55-42 through 3745-55-51 and corrective action for waste management units in accordance with OAC rule 3745-54-101. To obtain a hazardous waste facility installation and operation permit, Respondent is required to submit "Parts A and B" of the application in accordance with OAC Chapter 3745-50.
13. The submittal of a Closure Plan which complies with the administrative requirements of OAC Chapters 3745-65 and 66 and the substantive requirements of OAC Chapters 3745-54 and 55 including but not limited to the groundwater protection program in accordance with OAC rules 3745-54-90 through 3745-54-100 in lieu of the submittal of an application for a hazardous waste facility installation and operation permit is unlikely to adversely affect the public health or safety or the environment. Therefore, the Director finds that the issuance to Respondent of an exemption from the requirement to submit an application for a hazardous waste facility installation and operation permit for the Facility is unlikely to adversely affect the public health or safety or the environment within the meaning of ORC § 3734.02(G).

## **V. ORDERS**

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated there under according to the following compliance schedule:

1. Within 30 days of the effective date of these Orders, Respondent shall transport or cause the transportation of all previously identified hazardous wastes to an authorized hazardous waste storage, treatment, or disposal facility. Respondent shall provide a copy of the uniform hazardous waste manifest which

demonstrates compliance with this Order in accordance with Section X. of these Orders.

2. Within 30 days of the effective date of these Orders, Respondent shall submit to Ohio EPA for approval a Compliance Plan documenting when and how all remaining wastes at the Facility will be characterized pursuant to and in compliance with OAC rule 3745-52-11, documentation of any previously unidentified hazardous waste storage and/or disposal units based upon sampling results, and how any identified hazardous wastes will be properly managed in a manner that prevents releases until they are transported to an authorized hazardous waste storage, treatment, or disposal facility.
3. Within 90 days of approval of the Compliance Plan referenced in Order No. 2., Respondent shall implement and complete the tasks in the Compliance Plan. All sampling analytical results from the Compliance Plan shall be forwarded to Ohio EPA within 10 days after receipt by Respondent.
4. The Respondent is hereby exempted from the requirement to submit an application for a hazardous waste facility installation and operation permit for the Facility, *provided that* Respondent complies with the following:
  - a. Within 60 days after the effective date of these Orders, Respondent shall submit to Ohio EPA a Closure Plan for the identified hazardous waste storage/disposal areas in Finding No. 7. and Exhibit B;
  - b. This Closure Plan shall comply with the administrative requirements of OAC Chapters 3745-65 and 3745-66 and the substantive requirements of OAC Chapters 3745-54 and 3745-55, including but not limited to, the groundwater protection program in accordance with OAC rules 3745-54-90 through 54-100;
  - c. The Closure Plan is subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plan referenced in Order No. 4.a., and provides Respondent with a written statement of deficiencies, Respondent shall submit a revised Closure Plan for approval addressing the deficiencies within 30 days of receiving such written statement. If Ohio EPA modifies the Closure Plan, the modified Closure Plan becomes the approved plan;
  - d. Upon Ohio EPA approval of the Closure Plan, Respondent shall implement the approved Closure Plan in the manner and pursuant to the

time frames set forth in the approved Closure Plan and OAC rules 3745-55-13/3745-66-13;

- e. Within 30 days after Ohio EPA's approval of the Closure Plan pursuant to Order No. 4.a., above, Respondent shall submit a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for the areas of the Facility subject to closure, in accordance with OAC rules 3745-55-42 through 3745-55-47;
- f. Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rule 3745-55-15; and
- g. Within 60 days of making the determination of the existence of a new hazardous waste management unit(s) based on results from implementing Order No. 2., Respondent shall amend the approved closure plan in accordance with Order No. 4.b. through 4.f.

## **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and Ohio EPA's Division of Materials and Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is a [e.g., corporate officer] who is in charge of a principal business function of Respondent.



#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's Facility.

#### **VIII. OTHER APPLICABLE LAWS**

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

#### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

#### **X. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Northwest District Office  
Division of Materials and Waste Management  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attn: DMWM Manager

and Ohio EPA Central Office at the following address:

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For mailings, use the post office box number:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Materials and Waste Management  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Enforcement Supervisor

For deliveries to the building:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Materials and Waste Management  
50 West Town Street  
Columbus, Ohio 43215  
Attn: Enforcement Supervisor

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA reserves its rights to exercise its lawful authority to require Respondent to perform corrective action at the Facility at some time in the future, pursuant to ORC Chapter 3734. or any other applicable law. Respondent reserves its rights to raise any administrative, legal or equitable claim or defense with respect to any final action of the Director regarding such corrective action. Ohio EPA and Respondent each reserve all other rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders.

#### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek corrective action at the Facility

pursuant to OAC 3745-54-101, which right Ohio EPA does not waive, compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

### **XIII. EFFECTIVE DATE**

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

### **XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

\_\_\_\_\_  
Scott J. Nally  
Director

\_\_\_\_\_  
Date

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**IT IS SO AGREED:**

**Richland Shale Road Rail Depot, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

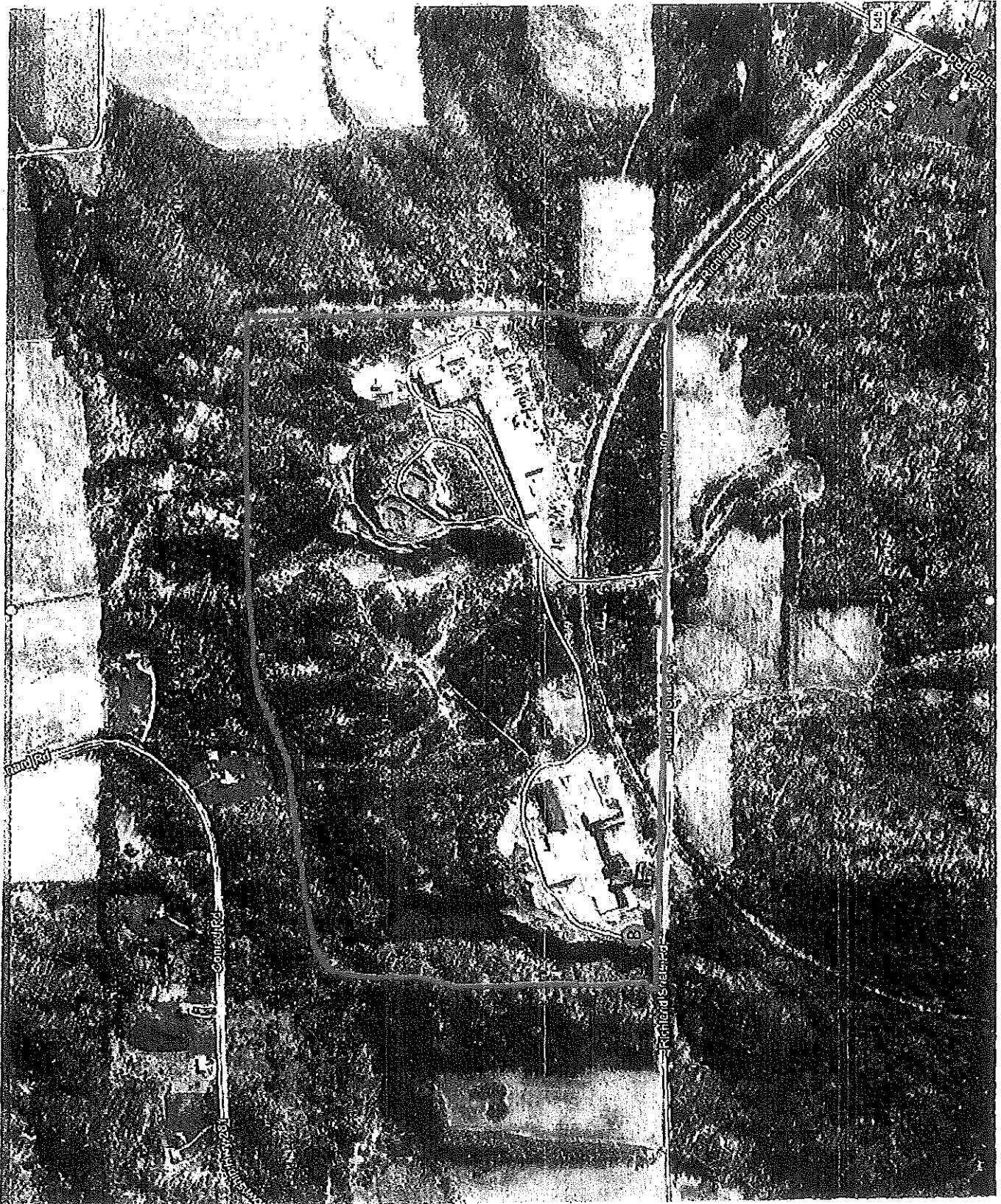
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Printed or Typed Name

\_\_\_\_\_  
Title

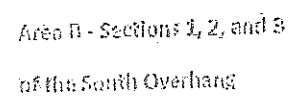
# Exhibit A

# Exhibit A

## General Facility Area of Concern



## Exhibit B



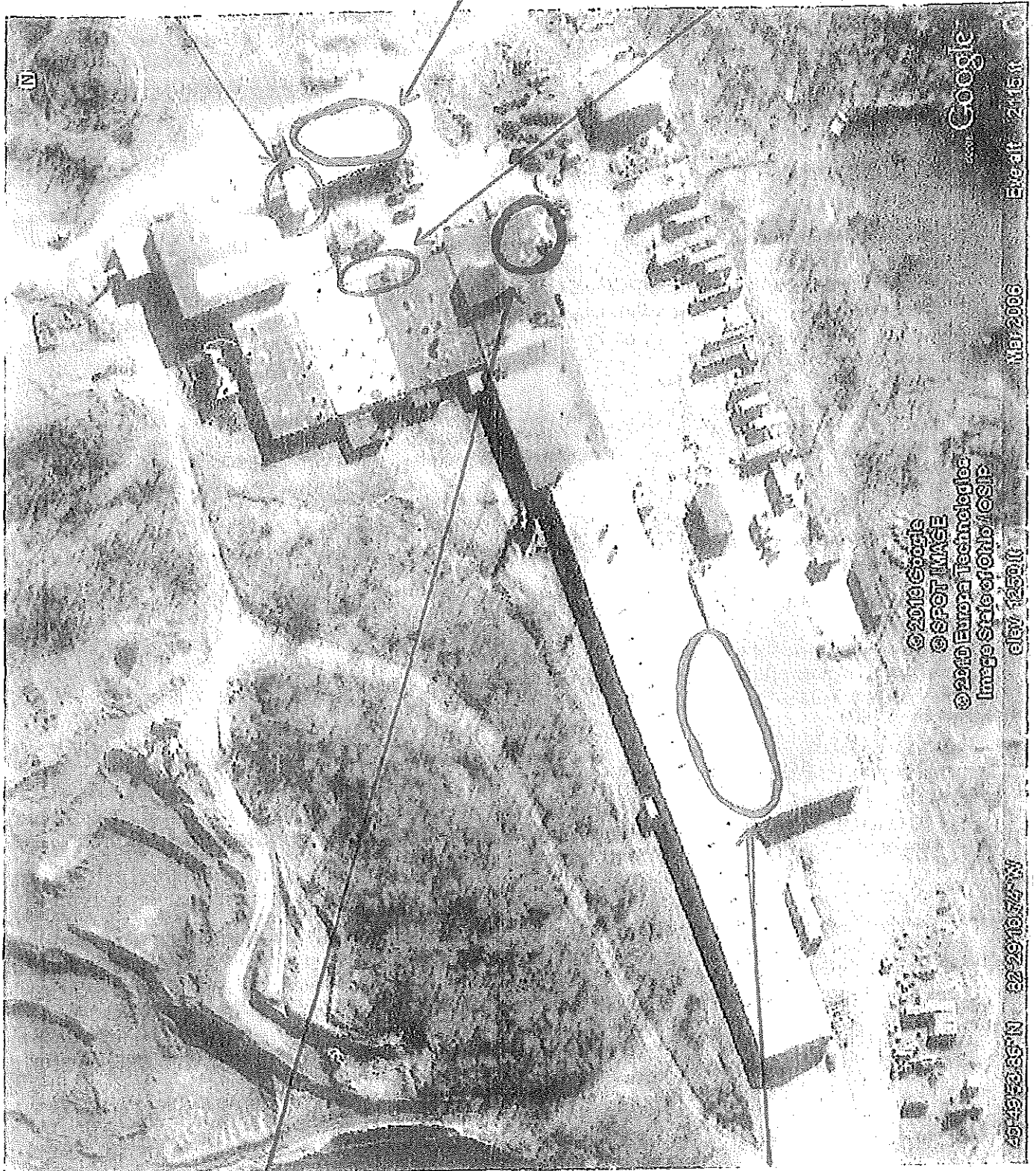


## Exhibit B Page 2

Area D-Main Maintenance Room and the Small Brick Building East of the Main Maintenance Room

Area C - Barium Carbonate Storage Area Room

Area E-East Wall near the Stripper Machine Area



Area G-South Wall of the Tunnel Kiln Building

Area F-Superintendent's Office and the Maintenance Store Room behind the Superintendent's Office



## FACT SHEET

Materials and Waste Management  
Updated February 2013

# The Administrative Enforcement Process within the Division of Materials and Waste Management (Hazardous Waste Program)

We developed this fact sheet to help you understand the administrative enforcement process within the Division. If you understand the process and are adequately prepared you can help resolve this enforcement action quickly. We have included answers to the questions most frequently asked by parties involved in the Division of Materials and Waste Management's ("DMWM") administrative enforcement process.

**I have been working with the District Office to Fix the Violations. Why is an enforcement action necessary?**

We consider the following factors when we decide that an enforcement action is necessary: (1) Ohio EPA needs to obtain redress for your violations; (2) your violations are serious; (3) you have taken too long to redress the violations; (4) you need to be on a formal schedule to address the violations; (5) you have been recalcitrant in addressing the violations; and/or (6) you are a chronic violator.

**Why should I try to negotiate an administrative consent order with Ohio EPA?**

- Negotiating administrative findings and orders ("Orders") with Ohio EPA avoids expensive and time-consuming litigation.
- It can be a swift resolution of the State's claims against you for the non-compliance,
- We can quickly identify any obstacles to agreement.

**Should I continue working with the district inspector?**

Yes, the district office inspector will be involved throughout the enforcement process and will continue to work with you to explain the technical aspects of the violations.

**What should I do now that I have received the proposed administrative consent order?**

You should review the enclosed Order and the summary of the penalty calculation. If you accept the enclosed Order as written, sign the Order and send it within two weeks to the staff attorney referenced in the Director's letter. If you cannot accept the Order as written, Ohio EPA would like to meet with you to discuss your concerns. Please contact the designated staff attorney at (614) 644-3037 to arrange a meeting.

**If I want to have a meeting, what should I do to prepare for it?**

Generally, the most productive meetings occur when both parties come prepared to discuss all issues. The Order and correspondence from the district inspector contain the Agency's position. Since you were not willing to agree to the order as written, Ohio EPA needs to know whether you: (1) disagree with the facts contained in the Order; (2) are not able or willing to comply with the Order; or (3) have information you feel may mitigate the civil penalty settlement amount. Please send to the staff attorney a written summary of your issues within two weeks from the date of the Director's letter. Additionally, if you believe you are financially unable to pay the penalty, contact the staff attorney for a list of information we need to evaluate your ability to pay.

## The Administrative Enforcement Process within the Division of Materials and Waste Management (Hazardous Waste Program)

### What will happen at the meeting?

During the meeting, Ohio EPA will respond to any information you have provided. We are willing to work with you to arrive at mutually agreed upon modifications to the Order. Except in the most complex cases, Ohio EPA expects to complete all negotiations at the meeting. If we cannot agree at the meeting and we feel we are making adequate progress, the Agency will hold its offer of settlement open. If we do not feel we are making adequate progress, the offer of settlement may be withdrawn and the agency may consider other enforcement alternatives, including referral to the Office of the Attorney General.

### Who from Ohio EPA will be at the meeting?

Everyone necessary to resolve the matter will be at the meeting or available during the meeting to provide settlement authority – specifically, the staff attorney, the district inspector, and the case coordinator from the enforcement unit. The division's enforcement coordinator may also attend the meeting.

### Who should I bring to the meeting?

Similarly, you should bring anyone familiar with the issues as well as anyone who has the authority to settle this matter. You are welcome to be represented at this meeting by your attorney and your consultant.

### Why do I have to pay a civil penalty settlement?

A penalty is necessary to deter future violations and to remove any economic incentive you may have realized from not complying with Ohio's regulations. Instead of a full cash payment, the Agency may be willing to accept a supplemental environmentally beneficial project that meets certain guidelines.

### How did DMWM arrive at the civil penalty settlement amount?

Ohio EPA relied on U.S. EPA's RCRA Civil Penalty Policy to calculate the penalty. Since U.S. EPA can seek up to \$25,000 per day per violation and Ohio can seek up to \$10,000 per day per violation, Ohio EPA adjusted the matrix accordingly. We have shown the matrix in the table below. Ohio EPA uses this Policy to ensure that we calculate penalties fairly and consistently and that the penalty is appropriate for the gravity of the violation. Enclosed is a summary of Ohio EPA's civil penalty settlement calculation. If you want a copy of U.S. EPA's RCRA Civil Penalty Policy contact the staff attorney at (614) 644-3037.

Civil Penalty Matrix				
Extent of Deviation				
Potential For Harm	Minor	\$40 to \$200	\$200 to \$600	\$600 to \$1,200
	Moderate	\$1,200 to \$2,000	\$2,000 to \$3,200	\$3,200 to \$4,400
	Major	\$4,400 to \$6,000	\$6,000 to \$8,000	\$8,000 to \$10,000

### News releases

Please be aware that Ohio EPA may issue a news release to the media to inform the community about the settlement of this case, after all parties have signed it. As a public agency whose primary mission is to promote compliance with environmental laws, we believe it is important to inform citizens about our enforcement efforts. Ohio EPA's news release represents our position, and so we do not negotiate the language in the news release with you. If we prepare a news release, you will receive a courtesy copy shortly before it is released to the media and posted on our web site. You can read all our news releases at: <http://epa.ohio.gov/News/OnlineNewsRoom/NewsReleases.aspx>